IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.153 OF 1999

Union of india,
Ministry of Labour,
through the Welfare
Commissioner, Labour
Welfare Organisation,
C60 Complex (Block 'C'),
Seminary Hills, Nagpur (M.S.) ....Petitioner.

Versus

1. The Presiding Officer,
Central Government
Industrial Tribunal,
No.2, Mumbai (M.S.), and

2. Shri Newton Mazerello,
r/o Velim, Olizaino,
Salcete, Goa. ....Respondents.

Shri J. Vaz, Additional Central Government Standing Counsel for the petitioner.

Shri V. Menezes, advocate for respondent no.2.

CORAM : SMT. NISHITA MHATRE, J.

DATE : 6th February, 2004.

ORAL JUDGMENT

This Writ Petition impugns the Award of the Central Government Industrial Tribunal II dated 18th June, 1998, by which the respondent no.2 has been granted reinstatement with continuity of service and full back wages.

2. The respondent workman hereinafter called "workman" was offered employment by the petitioner as a Laboratory Technician in the Office of the Vice Chairman, Iron Ore Mines Labour Welfare Fund Advisory Committee for Goa, Daman and Diu by a Memorandum of 12th March, 1974. On the workman accepting this Memorandum, he was issued an Order of

appointment on 25th April, 1974. By this Order of appointment, the workman was informed that he was appointed with effect from 18th March, 1974, on a pay scale of Rs.130-5-160-EB-8-280-10 plus usual allowances and rates admissible to the Central Government employees from time-to-time. The conditions mentioned in the Memorandum offering employment were also to apply to him. It is the case of the Petitioner that several memos and admonitions were issued to the workman from time-to-time due to his having committed serious irregularities. On 15th October, 1980, the services of the workman were terminated by informing him that his services were being terminated in accordance with Sub-rule (1) of Rule 51 of the Central Services (Temporary Service) Rules 1965. At the time of termination from service the workman was informed that he would be entitled to claim pay and allowances for the period of notice at the same rate that he was drawing on that date. Being aggrieved by this Order the workman filed W.P. 111/82 before this Court. While opposing the Writ Petition, a plea was raised by the Petitioner that the workman was employed in an industry and, therefore, had an alternate remedy of raising an industrial dispute and following the provisions of the I.D. Act. In view this the Writ Petition was withdrawn and the workman persued his remedies under the Industrial Disputes Act.

3. After the failure of the conciliation proceedings, reference was made for adjudication before the Industrial Tribunal. Pleadings were filed before the Tribunal.

The Petitioner contended in its written statement that the workman was covered by the Temporary Civil Services Rules and, therefore, the workman's services had been lawfully terminated in accordance with these Rules. The Petitioner also relied on the several memos issued to the workman calling upon him to improve as his services were not found satisfactory and as he had committed several acts of "irregularity". It was pleaded that since the workman's services were terminated under Rule 5(1) of the Central Service Services (Temporary Service) Rules, 1965, there was no question of the provisions of the Industrial Disputes Act being applicable. It was also pleaded that as there was no retrenchment, the provisions of Section 25-F were not applicable.

4. The workman filed his affidavit-in-chief and was cross-examined by the Petitioner. There is nothing to suggest that in the cross-examination that the Petitioner had challenged the plea of the workman that he was an industrial worker and that he was employed in an industry. The Petitioner has not led any evidence whatsoever before the Industrial Tribunal. The Industrial Tribunal by its Award has held that the services of the workman have been terminated illegally as there was no compliance with Section 25-F of the Industrial Disputes Act. The Industrial Tribunal held that it had jurisdiction to entertain the dispute and adjudicate upon it since the workman was employed in a hospital which was covered by the Industrial Disputes Act, in view of the judgment in the

case of **Bangalore Water Works Supply and Sewerage Board vs. A. Rajappa,** reported in 1978 I LLJ 349. In view of the several admissions that the wages in lieu of notice wages were not tendered at the time of terminating the services of the workman, nor was retrenchment compensation offered to him, the Industrial Tribunal held that the termination of services of the workman was illegal and not in accordance with the Industrial Disputes Act.

5. The Award has been impugned on several grounds. Shri Vaz, appearing for the Petitioner, submits that it is not an industry and, therefore, not covered by the Industrial Disputes Act. He submits that the workman was a temporary employee governed by the Civil Services (Temporary Service) Rules, which the Industrial Tribunal has not taken into consideration. He submits that the Industrial Tribunal has erred in ignoring the plea of the that the termination was effected in terms of the Memorandum of Appointment which made it clear that the services were governed by the Temporary Civil Services Rules. The learned counsel submits that in any event, the services of the workman were unsatisfactory and he did not deserve to be employed with the Petitioner. The learned counsel relied on the judgments in the case of **State of Uttar Pradesh & Anr. vs. Kaushal Kishore Shukla,** (1991) 1 SCC 691, **Union of India vs. Arun Kumar Roy,** (1986)1 SCC 675 and **State of U. P. vs. Km. Prem Lata Misra & Ors.,** AIR 1994 SC 2411, to buttress his submission that once a person is employed on a

temporary basis and his work is found to be unsatisfactory or he is unsuitable or unfit, the Petitioner could terminate his services as the Temporary Civil Service Rules were applicable.

6. Shri Menezes, for the workman, submits that the Temporary Civil Service Rules are not applicable. Assuming they are applicable, there is no conflict between the Rules and the Industrial Disputes Act. He submits that there is no pleading whatsoever that the Management is not an industry and, therefore, not covered by the Industrial Disputes Act, nor is there a pleading that the respondent is not a workman and, therefore, not covered by the Act. He further submits that assuming that the workman was employed on a temporary post, or was a temporary servant, he would still be entitled to retrenchment compensation and notice wages as a condition precedent to his termination from service as he had completed 240 days in service. He relies on the judgment of the Apex Court in the case of **Management of Karnataka State Road Transport Corporation, Bangalore vs. M. Boraiah & Anr.,** AIR 1983 SC 1320.

7. There is no pleading in the written statement that the petitioner is not an industry or that the hospital in which the workman was employed, though run by the Government, was not an industry. The Tribunal has rightly come to the conclusion that the establishment where the respondent was working was an industry as defined under Section 2(j) of the

Industrial Disputes Act, 1947. There is no pleading in the written statement that the respondent is not a workman and, therefore, not covered by Industrial Disputes Act. The Tribunal has considered the evidence on record and has come to the conclusion that the respondent who was employed as a Laboratory Technician was a workman and, therefore, covered by provisions of the Industrial Disputes Act.

8. The question now remains as to whether merely because the Temporary Civil Service Rules are applicable as contended by the learned counsel for the petitioner, the provisions of the Industrial Disputes Act would not apply.

9. The Temporary Civil Service Rules make it clear that they are applicable to those who hold a civil post, including all civilians paid from the Defence Service Estimates under the Government of India and who are under the rule-making control, but who do not hold a lien or suspended lien on any post under the Government of India or any State Government. The Rules are also applicable to those who are employed temporarily in work-charged establishments and who have opted for pensionary benefits. There is no doubt that although the hospital which is being run for administering medical services to mine workers is established and run by the Central Government. However, this would not mean that the hospital itself is not an industry. If the hospital is an industry, the question of the Central Civil Service Rules being applicable

does not arise. It is the Industrial Disputes Act which governs the relationship between the petitioner and the respondent. That being so, the respondent was entitled to notice wages and retrenchment compensation as a condition precedent to termination of services although he was a temporary workman. The Apex Court in K.S.R.T.C. v/s. M. Boraiah has concluded this issue and held that even a temporary workman who has completed 240 days in service is entitled to notice wages and retrenchment compensation in accordance with S.25F. The Tribunal has rightly come to the conclusion that the termination of services of the respondent is illegal as there was no compliance of Section 25-F of the Industrial Disputes Act. That being so, the termination is void ab initio.

10. The judgments relied on by Shri Vaz are inapplicable to the facts and circumstances in this case. All those cases dealt with persons who were not industrial workmen. Therefore those judgements do not take the Petitioner's case any further.

11. The Award is, therefore, upheld. Petition dismissed. Rule discharged. No order as to costs.

SMT. NISHITA MHATRE, J.

mc.